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87-768

Supreme Court, U.S.
FILED

OCT 3 1987

JOSEPH H. CHAMBLESS, JR.
CLERK

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1987

CARL EUGENE WILLIAMS,

Petitioner

versus

JOHN PAUL FORD,

Respondent

ON PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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ATTORNEYS FOR PETITIONER

489

QUESTIONS PRESENTED

1. Whether the court below erred in refusing to consider on the merits petitioner's challenge to the identification procedure to which he was subjected on the grounds that said issue had not been properly raised before the district court?

2. Whether the court below erred in affirming the judgment of the district court to the effect that petitioner received effective assistance of trial counsel?

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REFERENCE TO OPINIONS
DELIVERED IN THE COURT BELOW

1. The Magistrate's proposed findings of fact and conclusions of law, dated May 17, 1983, included as Exhibit A to the appendix;
2. The Order of the district court accepting the proposed findings and recommendations of the Magistrate, dated October 21, 1985, included as Exhibit B to the appendix;
3. The nonpublished opinion of the United States Court of Appeals for the Eleventh Circuit affirming the judgment of the district court, included as Exhibit C to the appendix. Said opinion is dated May 22, 1987; and

4. The Order of the United States Court of Appeals for the Eleventh Circuit, dated July 6, 1987, denying petitioner's motion for rehearing, included as Exhibit D to the appendix.



NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1987

CARL EUGENE WILLIAMS,
Petitioner
versus
JOHN PAUL FORD,
Respondent

ON PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

CONCISE STATEMENT OF
THE GROUNDS ON WHICH THE
JURISDICTION OF THIS COURT IS INVOKED

Petitioner CARL EUGENE WILLIAMS
respectfully prays that a writ of
certiorari issue to review the Judgment

and Order of the United States Court of Appeals for the Eleventh Circuit dated May 22, 1987, denying him habeas corpus relief. Petitioner timely moved the United States Court of Appeals for the Eleventh Circuit for a rehearing and the court denied petitioner's motion for rehearing by Order dated July 6, 1987.

This petition for writ of certiorari has been filed within ninety (90) days after the Order of the court below denying petitioner's motion for rehearing and is therefore timely.

28 U.S.C. § 2101(c); and Supreme Court Rules 20, 28, and 29.

This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS

Section I of the Fourteenth Amendment to the Constitution of the United States.

Sixth Amendment: The Sixth Amendment to the Constitution of the United States provides in pertinent part:

In all criminal prosecutions, the accused shall enjoy the right . . . to have the assistance of counsel for its defense.

28 U.S.C. § 2254(b) provides that:

An application for writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a state court shall not be granted unless it appears that the applicant has exhausted the remedies available in the courts of the state, or that there is either an absence of available state corrective process or the existence of circumstances rendering such process ineffective to protect the rights of the prisoner.

STATEMENT OF THE CASE

A. Basis For Federal Jurisdiction In
 the Court of First Instance

Jurisdiction was conferred on the United States District Court for the Middle District of Georgia pursuant to 28 U.S.C. §§ 2241 and 2254.

B. Course Of Proceedings In The
 State Trial Court.

Petitioner, Carl Eugene Williams, was indicated by the Grand Jury for the February, 1979, term of the Superior Court of Irwin County on a charge of armed robbery. Petitioner received a trial by jury on November 20, 21, and 23, 1979. Petitioner was sentenced to life imprisonment on November 23, 1979.

Petitioner appealed his conviction to the Court of Appeals of Georgia, which affirmed his conviction and sentence in Williams v. State, 157 Ga. App. 295, 277 S.E.2d 291 (1981). Petitioner subsequently sought habeas corpus relief, without the aid of counsel, in the Superior Court of DeKalb County, following an evidentiary hearing on December 4, 1981, and that court found petitioner's allegations to be without merit by Order of February 23, 1982. Petitioner's application to the Supreme Court of Georgia for probable cause to appeal was denied on April 20, 1982.

Petitioner thereafter instituted his federal habeas corpus proceeding by the filing of his petition in the United States District Court for the Middle District of Georgia on June 4, 1982. At that time, petitioner, untrained in the

law and without the aid and assistance of counsel, asserted four claims which had previously been asserted in the state court, which he felt demonstrated that his confinement was in violation of his federal constitutional rights: that counsel was ineffective, that the evidence was insufficient, that the prosecutor suppressed exculpatory evidence, and that the prosecutor used perjured testimony at trial.

On May 18, 1983, the United States Magistrate filed proposed findings of fact and conclusions of law in which he denied petitioner's petition for habeas corpus relief.

Finally, on October 21, 1985, almost three and one-half years after the filing of his original petition for relief in the district court, the district judge made a de novo review of the magistrate's proposed findings,

as well as petitioner's objections thereto, and accepted the magistrate's proposed findings and recommendations in their entirety, thus, denying petitioner's application for writ of habeas corpus.

After petitioner had initiated his appeal to the United States Court of Appeals for the Eleventh Circuit from the Order of the district court denying his application for relief, counsel was appointed by the United States Court of Appeals for the Eleventh Circuit to represent petitioner on his appeal. After reviewing the transcript of petitioner's trial, the record that existed of his prior habeas proceedings, and after having interviewed petitioner and his trial counsel, petitioner, with the aid of counsel, asserted three claims before the United States Court of



Appeals for the Eleventh Circuit which entitled him to habeas relief.

The grounds raised before the United States Court of Appeals for the Eleventh Circuit were as follows:

1. Whether the confrontation conducted when petitioner and the victim of the crime for which petitioner was prosecuted was so unnecessarily suggestive and conducive to irreparable mistaken identification that the victim's identification of petitioner lacked sufficient aspects of reliability, and thus, denied petitioner due process of law;

2. Whether petitioner's trial counsel, in failing to object to or otherwise move to exclude or suppress the identification testimony of the victim linking petitioner to the crime, rendered effective assistance of counsel as required by the Sixth Amendment; and

3. Whether at petitioner's trial, the prosecutor, through the use of his peremptory challenges, excluded members of petitioner's race from the petit jury solely on account of their race or on the assumption that black jurors as a group would be unable impartially to consider the State's case against a black defendant? (This claim provided in Batson v. Kentucky, 476 U.S. _____ (1986) is no longer asserted.)

Of the three grounds raised in the court below, the Court of Appeals addressed on the merits only the issue of ineffective assistance of counsel. The court refused to consider the remaining grounds, citing Ross v. Hopper, 716 F.2d 1528 (11th Cir. 1983), for the proposition that the appellate court will not address issues not raised before the district court.



REASONS FOR GRANTING THE WRIT

I.

THE COURT OF APPEALS
ERRED IN REFUSING TO ADDRESS
ON THE MERITS PETITIONER'S
"TAINTED IDENTIFICATION CLAIM":

In Singleton v. Wulff, 428 U.S.
106 (1976), this Court stated that

"[t]he matter of what questions may be taken up and resolved for the first time on appeal is one left primarily to the discretion of the court of appeals, to be exercised on the facts of individual cases. There is no general rule. Certainly, there are circumstances in which a federal appellate court is justified in resolving an issue not passed on below, as where the proper resolution is beyond any doubt (Citations omitted), or where 'injustice might otherwise result.'"



28 U.S.C. § 2254(b) recognizes that there are circumstances which justify the granting of a writ of habeas corpus in situations where the petitioner has failed to exhaust the remedies available in the courts of the state. It is recognized that the petitioner need not exhaust state remedies where there are circumstances which render such a process ineffective to protect his rights.

These principles of law should be applied to the circumstances in which petitioner finds himself. Looking back at the history of petitioner's journey through the state and lower federal courts in pursuit of habeas corpus relief, it is readily apparent that from the time petitioner sought habeas corpus relief in the state court until the time that the district court finally denied his application for writ of habeas



corpus, more than four years elapsed. After filing his petition in the district court, almost two and one half years followed before the district judge ruled on the petition.

Petitioner has been confined almost eight years as a result of a conviction which he urges was obtained in violation of his constitutional rights. Petitioner has been considered for parole and it is a likely possibility that if he is required to present this claim to the state and district court, he will be released from custody before his tainted identification claim is considered by those courts.

Under these circumstances, petitioner urges that the strict adherence of the United States Court of Appeals for the Eleventh Circuit to Ross v. Hopper, 716 F.2d 1528, 1535 (11th Cir. 1983), and the principle

announced therein to the effect that "arguments not presented and for which proof is not offered in the district court will not be considered for the first time on appeal" is error. The Eleventh Circuit Court of Appeals should have taken into consideration the circumstances warranting consideration of the tainted identification issue on its merits and failed to consider whether injustice might result from failure to do so.

Considering that petitioner labored pro se for many years prior to having his petition ruled upon by the district court, it is unconscionable for the court of appeals to appoint counsel to assist petitioner and at the same time deny petitioner the right to have his counsel assert the appropriate grounds for relief on the basis that they have not earlier been raised in the

district court. The ruling of the United States Court of Appeals for the Eleventh Circuit is in conflict with Singleton v. Wulff, supra, and subsection (b) of 28 U.S.C. § 2254.

II.

THE COURT OF APPEALS' HOLDING THAT PETITIONER'S TRIAL COUNSEL WAS EFFECTIVE, AND THAT TRIAL COUNSEL'S FAILURE TO OBJECT TO THE VICTIM'S IDENTIFICATION OF PETITIONER DID NOT AFFECT THE OUTCOME OF THE CASE AS REQUIRED BY STRICKLAND v. WASHINGTON, 466 U.S. 668 (1984), IS ERRONEOUS

Petitioner is aware of the burden that he carries under this Court's decision in Strickland v. Washington, 466 U.S. 668 (1984), in order to establish ineffectiveness of counsel violative of his Sixth Amendment rights.

Be that as it may, petitioner contends that his trial counsel's failure to move to exclude prior to

trial the identification testimony of the victim or to object at trial to the identification testimony of the victim was an error of such importance and of such magnitude that petitioner cannot be said to have received effective assistance of counsel. Petitioner was a black man being tried in a predominantly rural, South Georgia county for a crime against a prominent white citizen of that county who had resided there for some 31 years.

The only witnesses who identified petitioner as a party to the crime were the victim, and petitioner's two alleged accomplices.

With regard to petitioner's two alleged accomplices, the state court judge who presided over the state habeas proceeding characterized them as two convicted felons who came in and testified that they were promised



something for their testimony. With this in mind, the victim's identification testimony at trial was critical toward the jury's eventually returning a verdict of guilty against the petitioner. Absent the identification testimony of the victim, the jury could easily have concluded that the testimonies of the two alleged accomplices were so motivated by self interest as to be unworthy of belief.

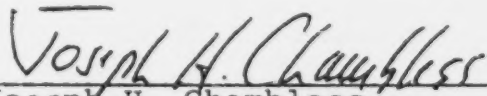
The effect of the in court identification of the alleged criminal by the prominent white victim of a crime committed against him by a black man in a predominantly rural, South Georgia community in front of a jury of twelve white citizens of that county cannot possibly be overstated. Petitioner thus contends that the error on the part of his trial counsel in not objecting to or otherwise attempting to exclude this in

court identification testimony was professionally unreasonable and had a certain prejudicial effect to the defense.

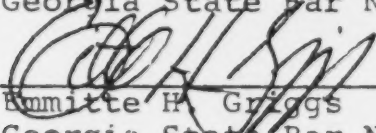
CONCLUSION

This is a case that presents meritorious claims for relief. Petitioner thus prays that this Court grant his petition for certiorari.

Respectfully submitted, this 5th day of October, 1987.



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Emmette H. Griggs
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IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF GEORGIA
VALDOSTA DIVISION

CARL EUGENE WILLIAMS,	:	
	:	
Petitioner	:	
	:	CIVIL ACTION
vs.	:	NO. 82-58-VAL
	:	
J. PAUL FORD, WARDEN,	:	
	:	Magistrate No.
Respondent	:	83-0055-M

PROPOSED FINDINGS OF FACT
AND CONCLUSIONS OF LAW

The petitioner in this 28 U.S.C.
§ 2254 action is presently serving a
sentence of life imprisonment imposed by
the Superior Court of Irwin County
following his conviction by jury in that
court on November 23, 1979, of armed
robbery. Petitioner appealed his conviction
to the Court of Appeals of Georgia, which
affirmed the conviction and sentence in
Willlliams v. State, 157 Ga. App. 295
(1981). Petitioner subsequently sought
habeas corpus relief in the Superior Court



of DeKalb County, and following an evidentiary hearing on December 4, 1981, that court found petitioner's allegations to be without merit by order of February 23, 1982. Petitioner's application to the Supreme Court of Georgia for probable cause to appeal was denied on April 20, 1982. Petitioner then sought federal habeas corpus relief in this court with the filing of his petition on June 4, 1982.

Petitioner asserts the following enumerations of error:

- (1) He was denied the effective assistance of counsel at the trial of his case;
- (2) The evidence was insufficient to support his conviction;
- (3) Exculpatory evidence was suppressed by the prosecution; and
- (4) The prosecutor knowingly



used perjured testimony in the trial of his case.

Petitioner's enumerations of error are identical to those that were raised by him in his state habeas corpus petition. Accordingly, this court finds that petitioner has exhausted available state remedies. The record demonstrates that petition was afforded a full and fair hearing by the state court, and therefore the findings of fact included therein shall be presumed correct. 28 U.S.C. § 2254(d). As the state fact finding procedure was adequate in this case, no evidentiary hearing is required to be held by this court. Flores v. Estelle, 578 F.2d 80 (5th Cir. 1978).

ASSISTANCE OF COUNSEL

Petitioner asserts that he was denied the effective assistance of counsel

at the trial of his case. Specifically, he contends that counsel failed to object to the victim's in-court identification of him, failed to renew the request for the accomplices' statements, did not object to evidence introduced at sentencing, and did not file a challenge to the grand jury or a motion for a speedy trial.

Petitioner's claim of ineffective assistance of counsel requires the court to inquire into the actual performance rendered by counsel based on the totality of circumstances. Lovett v. Florida, 627 F.2d 706 (5th Cir. 1980). The right to counsel guaranteed by the sixth amendment gives one the right to effective counsel, not errorless counsel, and not counsel judged ineffective by hindsight. Washington v. Strickland, 673 F.2d 879 (11th Cir. 1982); MacKenna v. Ellis, 280



F.2d 592 (5th Cir. 1960). Counsel reasonably likely to render and rendering effective assistance is sufficient.

MacKenna, 280 F.2d at 599.

Petitioner faults counsel for failing to renew his request for the statements of his co-defendants. Yet counsel filed a notice to produce in response to which the trial court made an in camera inspection of the file prior to trial and denied counsel access to these statements. Thus it would have been pointless for counsel to request these documents again and his failure to do so cannot be considered ineffective assistance.

As to petitioner's contentions that counsel failed to challenge the grand jury, to move for a speedy trial, or to object to the introduction of petitioner's



prior convictions at sentencing, petitioner has presented no evidence that the grand jury was improperly composed, that he was denied a speedy trial, or that the prior conviction was illegal. Such merely conclusory allegations cannot in and of themselves support a finding of ineffective assistance. Similarly, counsel's failure to object to the in-court identification does not constitute ineffective assistance. Although the identification was weak and counsel did not object specifically to it, counsel thoroughly cross-examined the witness and brought out the deficiencies in the identification. This court agrees with the state habeas court that his lawyer did a good job in handling this aspect of his trial. Thus counsel's performance cannot be faulted in this regard.

An inquiry into counsel's actual performance in representing petitioner reveals that counsel filed pre-trial motions, conducted voir dire examination, made numerous objections throughout the trial, conducted thorough cross-examination of all of the state's witnesses, filed requests to charge, and made closing argument. This court notes that counsel was particularly effective in cross-examining both the victim and petitioner's co-defendants, attacking the victim's in-court identification of the petitioner and bringing out questions of motive, bias and prejudice on the part of petitioner's accomplices.

At the conclusion of the trial, during the sentencing phase, petitioner stated that he thought he had received a fair and impartial trial. The trial court



specifically noted that it had found his attorney to have been competent.

Based on a review of the entire record in this case, this court concurs with the state habeas court that the alleged failures of counsel, either separately or collectively, did not result in depriving petitioner of effective assistance. The effort counsel put forth was certainly reasonably effective within the meaning of the standard set forth in MacKenna. Understandably petitioner is not now satisfied with the result of his attorney's efforts, but the sixth amendment does not provide the right of satisfaction. Loftis v. Estelle, 515 F.2d 872 (5th Cir. 1975). In the totality of circumstances of this case, the performance rendered by petitioner's attorney measures well against the standards for effective representation.

SUFFICIENCY OF EVIDENCE

Petitioner asserts that the evidence was insufficient to convict him in that the testimony of his co-defendants was inconsistent and thus could not be used to corroborate the identification testimony of the victim. As a consequence, he contends that the evidence did not sufficiently connect him with the crime.

A federal habeas petitioner attacking the sufficiency of the evidence is entitled to relief only if a review of the evidence in the light most favorable to the prosecution supports a conclusion that no rational trier of fact could have found proof of guilt beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307 (1979).

It is true that petitioner's two co-defendants testified inconsistently as to certain facts, such as whether

petitioner had on a blue suit under the leather coat he was wearing and whether the guns were hidden in the trunk of the car or under the hood. However, these minor inconsistencies do not render the evidence insufficient to support a conviction as there was evidence which established the essential elements of the crime of armed robbery.

The evidence introduced at trial showed that the defendant and his co-defendants traveled from Georgia to Florida and at some point along the way decided to perpetrate a robbery. At petitioner's direction, they drove to Ocilla and petitioner pointed out the jewelry store they were to rob. One co-defendant went into the store to check it out and after coming back to the car was to serve as the getaway man. The other



co-defendant then went in to get the storeowner's attention at which time the man, subsequently identified as petitioner, entered carrying a tape case. He produced a pistol and informed the victim that this was a robbery. The victim managed to activate an alarm which was connected to the police department before he was taken in the back and tied up. As the police drove up a few moments later, petitioner removed the jewelry from the display case and cash from the register and he and the co-defendant exited through the back door. According to the victim, petitioner gave all instructions throughout the incident.

The coat and cap petitioner was said to have been wearing and the tape case he was carrying were found a short time later in the vicinity. Admitting that he looked different because he no longer had a



beard, the victim identified petitioner at trial because he had "a small nose than average" and "in the whites of his eyes there were some brown specks." Both co-defendants also connected petitioner with the robbery. Their testimony, while inconsistent on minor points, was in essence corroborated by the other evidence submitted at trial.

After a careful consideration of the entire record in this case, this court concurs with the finding of the state appellate court that the evidence was sufficient to support petitioner's conviction of armed robbery. Thus, there is no merit to this allegation.

SUPPRESSION OF EVIDENCE

Petitioner also enumerates as error the suppression of exculpatory evidence by the prosecutor in violation of

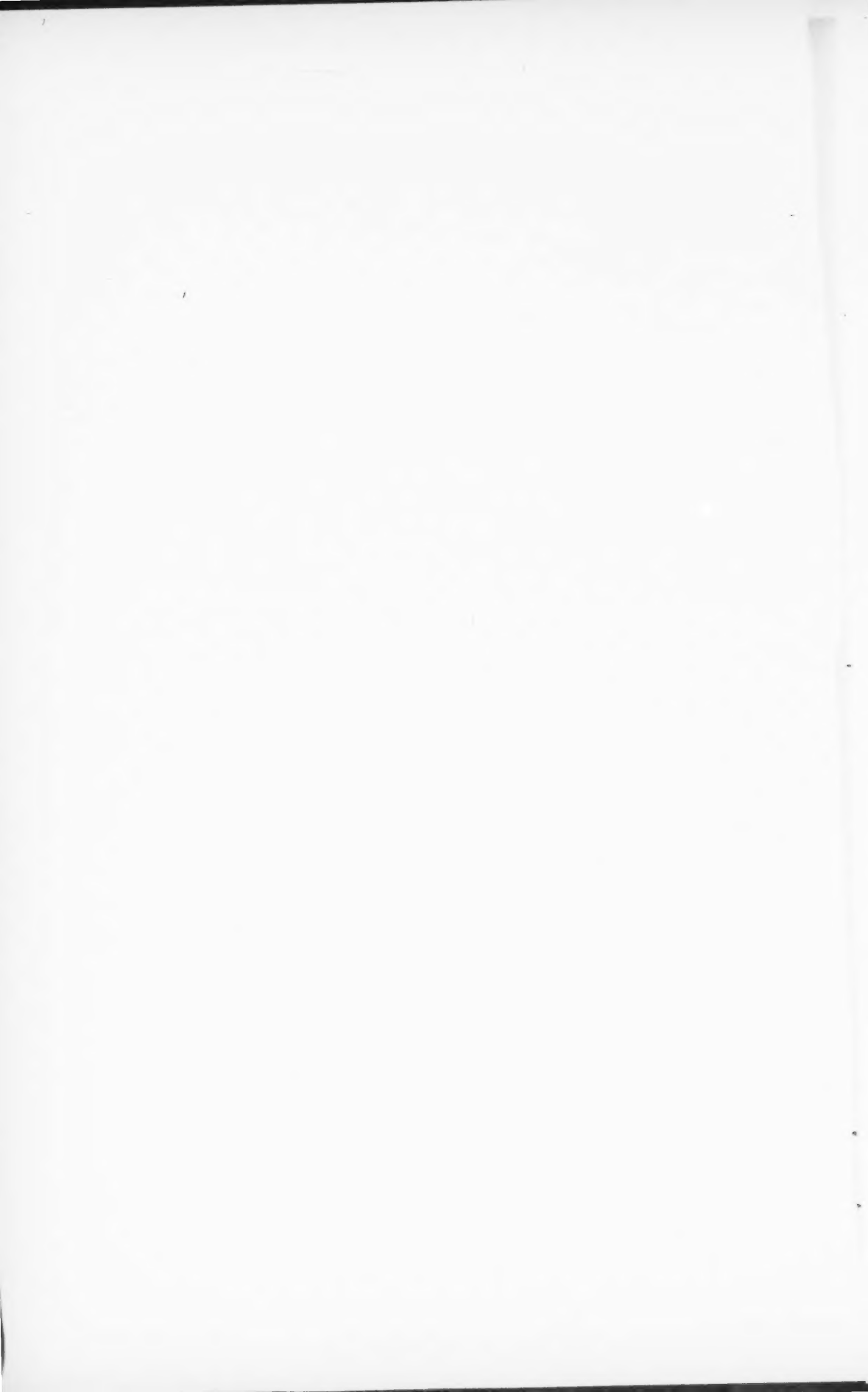


Brady v. Maryland, 373 U.S. 83 (1963).

It is petitioner's contention that the statements of his co-defendants should have been provided him and the fact that he did not have these statements affected the outcome of his trial.

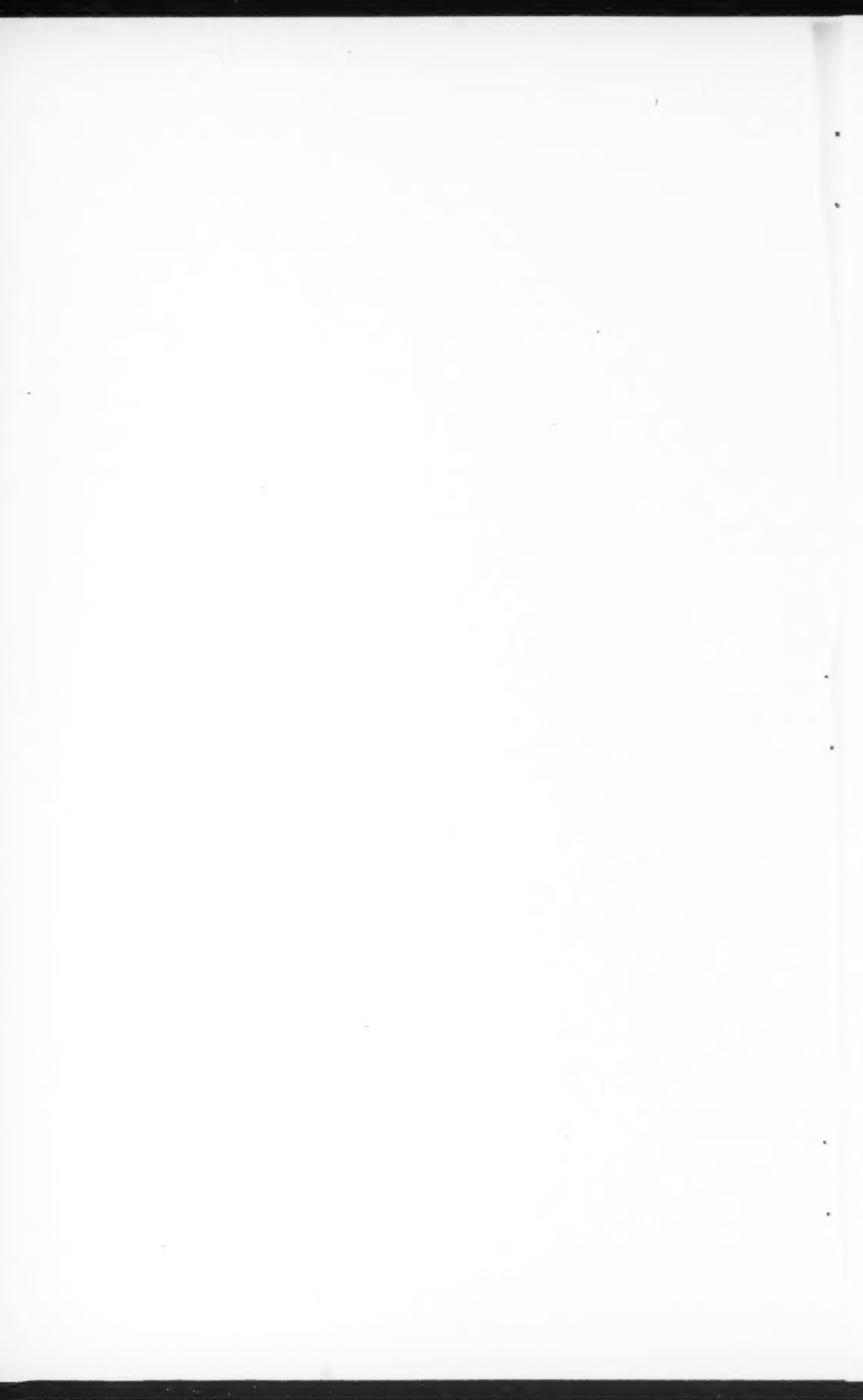
Under Brady, material exculpatory evidence in the possession of the prosecutor must be provided to the defendant. Implicit in the requirement of materiality is a concern that the evidence withheld could have affected the outcome of the trial. United States v. Agurs, 427 U.S. 97, 104 (1975). Evidence is material for purposes of disclosure by the prosecution if it creates a reasonable doubt that did not otherwise exist. Id. at 112.

Prior to trial petitioner's counsel filed a notice to produce his



co-defendants' statements. The trial court conducted an in camera inspection of the file and concluded that Brady had been complied with and petitioner was not entitled to the statements. On appeal the Georgia court reviewed the statements and decided that they contained nothing exculpatory to petitioner. It noted that although some of the witnesses' trial testimony was inconsistent, the co-defendants' statements were not inconsistent with their trial testimony. Williams, 157 Ga. App. at 296.

This court agrees with the state courts that petitioner has not made the required showing that the undisclosed evidence was either material or exculpatory. It does not perceive that the statements withheld would have affected the outcome of the trial. As they were not



inconsistent with the trial testimony, they could not even be used for purposes of impeachment. Thus they were neither material nor exculpatory. There was no Brady violation by virtue of the fact that petitioner did not have his co-defendants' statements and petitioner is not entitled to relief on this basis.

PERJURED TESTIMONY

As his final enumeration of error, petitioner alleges that the prosecutor used perjured testimony at trial. The basis for this allegation is petitioner's assertion that his co-defendants admitted in their testimony that deals had been made in exchange for their testimony and that the district attorney then had them deny that any such deals had been made.



In order for perjury by a witness to constitute grounds for the grant of a writ of habeas corpus, the petitioner must show that the state knowingly used the perjured testimony. Skipper v. Wainwright, 598 F.2d 425, 427 (5th Cir.) cert. denied, 444 U.S. 974 (1979). In this case, petitioner has not carried his burden of proving the facts behind his allegation.

One co-defendant testified that he never even discussed petitioner's case with the district attorney until after he was sentenced, so clearly he made no deal with the prosecution. The other co-defendant testified that he did not know how much time he was going to get until he entered his plea and was sentenced, testimony which would negate the possibility that a deal had been made.

Thus petitioner has failed to show either that the evidence complained of was perjured or that the state was aware of any alleged perjury. This court finds no support for this enumeration of error.

Accordingly, this petition for habeas corpus is DENIED in its entirety.

This 17th day of May, 1983.

s/John D. Carey
John D. Carey, United
States Magistrate

FAILURE TO FILE WRITTEN
OBJECTIONS TO THE PROPOSED FINDINGS AND
RECOMMENDATIONS CONTAINED IN THIS REPORT
WITHIN TEN DAYS FROM THE DATE OF ITS FILING
SHALL BAR AN AGGRIEVED PARTY FROM ATTACKING
THE FACTUAL FINDINGS ON APPEAL.

This is to certify that I have mailed a copy to Lundie Smith, Deputy Clerk in Valdosta, Ga., for docket entry and for him to mail our usual letter for objections to the within Proposed Findings.

This 18th day of May, 1983.
s/Donna N. Phillips
Donna N. Phillips
Deputy Clerk



IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF GEORGIA
VALDOSTA DIVISION

CARL EUGENE WILLIAMS, :
: Petitioner :
: CIVIL ACTION :
vs. : NO. 82-58-VAL :
: J. PAUL FORD, WARDEN, :
: Respondent :

ORDER

The magistrate filed proposed findings and recommendations with the court to which written objections were filed. Pursuant to Rule 8(b), the undersigned judge, having made a de novo determination of the objected to proposed findings, does hereby accept the proposed findings and recommendations in their entirety.

Petitioner's application for writ of habeas corpus is therefore DENIED.



SO ORDERED, this 21st day of
October, 1985.

s/Wilbur D. Owens, Jr.
Wilbur D. Owens, Jr.
United States District
Judge



IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 86-8088
Non-Argument Calendar

CARL EUGENE WILLIAMS,
Petitioner-Appellant,

versus

JOHN PAUL FORD,
Respondent-Appellee.

Appeal from the United States District Court
for the Middle District of Georgia

(May 22, 1987)

BEFORE GODBOLD, HILL and KRAVITCH, Circuit
Judges.

PER CURIAM:



Carl Eugene Williams, a Georgia inmate convicted of armed robbery, appeals the denial of his § 2254 habeas petition by the district court. On appeal Williams raises three grounds: (1) the in-court identification by the victim was impermissibly tainted; (2) trial counsel was ineffective for failing to object to the allegedly tainted identification; (3) black jurors were purposefully excluded from his jury, Batson v. Kentucky, 106 S. Ct. 1712 (1986). Finding all claims without merit, we affirm.¹

In his habeas petition appellant did not challenge the identification procedure, except in the context of his claim of ineffective assistance of counsel, and this court will not address issues not raised before the district court. Ross v. Hopper, 716 F.2d 1528, 1535 (11th Cir. 1983).



Williams' claim that his counsel was ineffective for failing to object to the victim's identification also must fail. Although, as the magistrate found, the in-court identification by the victim was "weak," the witness properly identified the robber's clothing, and the testimony of both of Williams', accomplices implicated Williams in the robbery and identified his clothing; therefore counsel's failure to object to the victim's identification hardly would have affected the outcome of the case as required by Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984).

Equally without merit is appellant's claim pursuant to Batson v. Kentucky, 106 S. Ct. 1712 (1986). Williams did not raise at the district court level his jury composition challenge, and hence cannot raise it for the first time on appeal.



Ross, supra. Regardless, however, this claim is without merit as Batson is not retroactively applied to habeas proceedings, Allen v. Hardy, 106 S. Ct. 2878 (1986).

Accordingly, the judgment of the district court is AFFIRMED.

Other claims raised in the petition are not included on appeal and are deemed abandoned. Rogero v. Noone, 704 F.2d 518, 520 n.1 (11th Cir. 1983).



IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 86-8088
Non-Argument Calendar

CARL EUGENE WILLIAMS,

Petitioner-Appellant,

versus

JOHN PAUL FORD,

Respondent-Appellee.

Appeal from the United States District Court
for the Middle District of Georgia

ON PETITION(S) FOR REHEARING
(July 6, 1987)

BEFORE GODBOLD, HILL and KRAVITCH, Circuit
Judges.

PER CURIAM:

The petition(s) for rehearing filed by Carl
Eugene Williams is DENIED.

ENTERED FOR THE COURT:

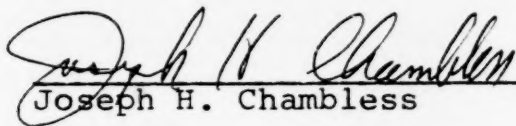
s/ Phyllis Kravitch
United States Circuit Judge



CERTIFICATE OF SERVICE

I, Joseph H. Chambless, Attorney of Record for Petitioner, do hereby certify that I have this day served the within and foregoing Petition for Writ of Certiorari upon Ms. Mary Beth Westmoreland, Attorney of Record for Respondent, by mailing three true and correct copies thereof, properly addressed and with sufficient postage attached thereto to insure delivery to her at her address of record, to-wit: 132 State Judicial Building, 40 Capitol Square, S.W., Atlanta, Georgia 30334.

This 5th day of October, 1987.



Joseph H. Chambless